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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/682,177

Applicant(s)

AGUILAR ET AL.

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 20-24 and 31-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 25-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1761

DETAILED ACTION

1. The Amendment filed February 27, 2004 has been entered. Claims 1-34 remain pending. Claims 20-24, 31-34 were withdrawn from consideration as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-19,25-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding the new limitation "wherein the wet pet food is stored in an unpackaged condition", "the specification does not described an *unpackaged* condition relative to the wet pet food. On the contrary applicant's specification is directed to a packaged wet pet food. Additionally, subsequent claim language is directed to a *packaged* condition and contradicts the new limitation, such as:

a. Claim 1 recites "wherein the wet pet food is stored in an unpackaged condition", but claim 5 recites "the wet pet food is shelf stable". The specification does not describe how a wet food that is unpackaged is shelf stable.

Art Unit: 1761

b. Claim 10 recites the wet food product "that is stored in an unpackaged condition", but in the next line claim 10 recites "a resealable lid removably attached to the container, the lid adapted to seal the compartments from ambient air". A lidded/sealed wet food compartment would place the wet food in a *packaged* condition.

It appears that applicant is attempting to overcome the prior art references that teach a wet food compartment that holds a *packaged* wet food (e.g. Schommer et al.). For examination purposes, "wherein the wet pet food is stored in an unpackaged condition" is understood to be the wet pet food is contained within and in contact with the wet food compartment.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-3,5,8,10,11,13,15,17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schommer et al. (US 5887749). See the reasons cited in the Office Action mailed October 24,2003. Note that Schommer et al. teach the wet food is shelf stable food since it originated from a can. Note that Schommer's tray includes dry food bits (i.e. compartment 40), pet treats (i.e. compartment 30) and the canned wet food (i.e. compartment 20), and the consumer dispenses the wet food to compartment 20 or mixes it with compartment 40. Afterwards, the entire tray may be re-sealed and

stored in a refrigerator, which would result in wet food in an unpackaged condition (See column 1, lines 29-35 in light of Column 6, lines 5-19, Figures).

6. Claims 1-3,5,7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kornacki (US 5925390).

7. See Column 3, line 25 to Column 4, line 4.

8. Claims 1-3,5,7,8,10,13, are rejected under 35 U.S.C. 102(b) as being anticipated by Cousino (US 4421059) as evidenced by Merriam Webster OnLine.

9. Regarding claims 1-3,7,8,10,13, Cousino teaches a tray (i.e. an open receptacle with a flat bottom and low rim for holding or exhibiting articles as evidenced by Merriam Webster OnLine) that includes multiple compartments of dry cat food, multiple compartments of wet cat food, individual lids (e.g. for storage of wet) and a lid over all of the compartments(Column 1, lines 25-45, Column 1, line 60 to Column 2, line 40. Column 2, line 54 to Column 3, line 9, Column 4, lines 1-14,Column 6, line 58 to Column 7, line 9, Figures).

10. Regarding claim 5, the wet pet food is shelf stable food in that it came from a can (Column 2, lines 68 and 69).

11. Claims 1-3,5-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Foreman et al. (US 2001/0048955 A1).

12. See Paragraphs 1-12,15,18,30-33,35-38,40-43,45.

Claim Rejections - 35 USC § 103

13. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
14. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) as applied to Claims 1-3,5,8,10,11,13,15,17 above.
15. See the Office Action Mailed October 24,2003.
16. Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) as applied to Claims 1-3,5,8,10,11,13,15,17 above, further in view of Lasater et al. (US 5200218).
17. See the Office Action Mailed October 24,2003.
18. Claims 7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) as applied to Claims 1-3,5,8,10,11,13,15,17 above.
19. See the Office Action Mailed October 24,2003.
20. Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) as applied to Claims 1-3,5,8,10,11,13,15,17 above, further in view of Prydie (US 64430964 B1) and Ciguere (US 6568347 B2) and Frank (US 5671846).

Art Unit: 1761

21. Schommer et al. teaches multiple food compartments, but are silent in teaching a crease between two compartments to allow one compartment to be moved relative to the other.

22. Prydie, like Schommer et al., teach a pet food tray containing wet and dry components that is intended to be stored under cool conditions. However Prydie teaches a hinge is provided between the wet and dry compartments so that the compartments can be folded over onto one another for the purpose of transporting the food in a convenient manner and providing a cooling means associated with a lid that is attached to one compartment to not only keep the components cool but keep the components separately stored (Abstract, Column 1, line 30 to Column 2, line 24). Ciguere, who also teaches providing a wet component and a dry component for a pet meal that are held in separate compartments folded onto one another, are relied on as evidence of providing a crease as the folding mechanism (Abstract and Figures).

23. Frank is relied on as evidence of providing a tray a *plurality* of food compartments, each individually sealed and differently shaped, that can be folded onto one another to provide a transportable meal (Abstract).

24. Therefore, it would have been obvious to provide a crease in between the wet and dry compartments (e.g. compartment 20 and 40) of Schommer et al. since Prydie teaches by providing compartments that fold upon one another one can provide a convenient manner of transporting a pet meal as well as providing a cooling means between the compartments, and Ciguere teaches providing a crease to fold wet and dry pet food compartments for a pet food container to provide a similar configuration.

Art Unit: 1761

25. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) as applied to Claims 1-3,5,8,10,11,13,15,17 above, further in view of Ciguere (US 6568347 B2).

26. Schommer et al. teach the wet pet food end has a rounded shape and teach the dry food compartment must be sized to accommodate both wet and dry food (Figures, Column 3, lines 55-64), but are silent in teaching the dry pet food has a rounded shape.

27. Ciguere is relied on as evidence of a rounded shape that provides sufficient space for dry and wet pet meal components to be combined (Abstract, Figures Column 2, line 36 to Column 3, line 40). Therefore, it would have been obvious to modify Schommer et al. and include a rounded shape to accommodate the dry food since Schommer et al. teach the dry food compartment must be large enough to accommodate both the wet and dry food components when combined and Ciguere teaches a rounded shaped dry food compartment is large enough to accommodate the combined the wet and dry meal components.

28. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) as applied to Claims 1-3,5,8,10,11,13,15,17 above, further in view of Morgan (WO 9925205).

29. See the Office Action Mailed October 24,2003.

30. Claims 25,26,and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) in view of Dilot (US 3829003) and Warndorfer et al. (US 3057536)

31. Regarding claims 25,26, and 28, Schommer et al. teach removing a canned wet food, dispensing the wet food into both a wet food compartment and a first dry food compartment, and that the tray further comprises a second dry food compartment (i.e. treats) but is silent in removing a divider between the two compartments or at least three compartments such that the wet and dry foods contact each other, as recited in claims 25 , 26, and 28.

32. Dilot also teaches a tray for separately holding wet and dry foods (e.g. meat and gravy with potatoes and vegetables) that are to be mixed prior to consumption.

However, Dilot teaches by providing removable dividers between compartments makes it easier to blend the two compartments and also allows empty containers to be stacked (Column 1, lines 22-39,Column 3, lines 8-35). Dilot further teaches one can use multiple dividers as recited in claims 26 and 28.

33. Warndorfer et al. are relied on as further evidence of providing a removable divider between a wet product and a dry product compartment for mixing the two components, wherein the products may be food items(column 1, lines 10-20, Column 4, lines 8-13).

34. Therefore it would have been obvious to modify Schommer et al. and include a removable dividing wall between the wet food compartment and dry food compartment so that one could optionally add the two components since Dilot teaches this is provides

Art Unit: 1761

an easier method of blending and allows the empty tray structure to be stackable. It would have been further obvious to provide a plurality of compartments or multifood compartments between a first and second food compartment since (1) Schommer et al. teach three compartments: two dry and one wet with the wet compartment sharing walls with both, (2) Schommer et al. teach combining the wet food with one of the dry foods, and (3) Dilot further teaches one is not limited to two compartments for mixing.

35. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) in view of Dilot (US 3829003) and Warndorfer et al. (US 3057536), as applied to claims 25,26,28 above, further in view of Zellner et al. (EP 500318A1) and Frank (US 5671846).

36. Schommer et al. are silent in teaching folding one multifood compartment onto another.

37. Zellner et al. also teaches a multi-food component meal package. Zellner et al. teach providing a hinge for folding over multi-food compartment onto another multifood compartment provides the benefit of providing a relatively large volume in a reduced space (Column 1, lines 9-32, Column 2, lines 3-25).

38. Frank is relied on as further evidence of providing a tray a plurality of food compartments, each individually sealed and differently shaped, that can be folded onto one another to provide a transportable meal (Abstract).

39. Therefore it would have been obvious to include a hinge between multi-food components since Zellner et al. teach this allows the package to provide a relatively large volume of food in a reduced space.

40. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) view of Prydie (US 64430964 B1) and Ciguere (US 6568347 B2)

41. Schommer et al. a tray that includes dry food bits (i.e. compartment 40), pet treats (i.e. compartment 30) and the canned wet food (i.e. compartment 20). The consumer dispenses the wet food to compartment 20 or mixes it with compartment 40. Afterwards, the entire tray may be re-sealed and stored in a refrigerator, which would result in wet food in a unpackaged condition (See column 1, lines 29-35 in light of Column 6, lines 5-19, Figures). Schommer et al. are silent in teaching a hinge between one compartments to allow one compartment fold over onto the other compartment.

42. Prydie, like Schommer et al., teach a pet food tray containing wet and dry components that is intended to be stored under cool conditions. However, Prydie teach a hinge is provided between the wet and dry compartments so that the compartments can be folded over onto one another for the purpose of transporting the food in a convenient manner and providing a cooling means associated with a lid that is attached to one compartment to not only keep the components cool but keep the components separately stored (Abstract, Column 1, line 30 to Column 2, line 24).

Art Unit: 1761

43. Frank is relied on as further evidence of providing a tray a plurality of food compartments, each individually sealed and differently shaped, that can be folded onto one another to provide a transportable meal (Abstract).

44. Therefore, it would have been obvious to provide a crease in between the wet and dry compartments (e.g. compartment 20 and 40) of Schommer et al. since Prydie teaches by providing compartments that fold upon one another one can provide a convenient manner of transporting a pet meal as well as providing a cooling means.

Response to Arguments

45. Applicant's arguments with respect to the rejections of claims 1,3,5,8-10,13,15,29,30 under 35 U.S.C. 102(b) as being clearly anticipated by Lepper (US 3137272), claims 1,3,5,8,9, 29,30 under 35 U.S.C. 102(b) as being clearly anticipated by Zarski (US 5947056), claims 1,5,25, under 35 U.S.C. 102(b) as being clearly anticipated by Smith (US 4006820), Claims 1, 5,8-11,13, 25,29,30 under 35 U.S.C. 102(e) as being clearly anticipated by Prydie (US 6443096 B1), and claims 1,3,5,10,11, 14-16, 29,30 under 35 U.S.C. 102(e) as being clearly anticipated by Ciguere (US 6568347 B2) have been fully considered and are persuasive in that none of these references teach a wet pet food in stored in a wet food compartment in an "unpackaged" condition. Therefore, the rejections have been withdrawn. However upon further consideration, new grounds of rejection are made as set forth above.

46. Applicant's arguments directed to the rejection of claims 1,5,8-11,13,14,29,30 under 35 U.S.C. 102(b) as being clearly anticipated by King et al. (US 5752464) and

claims 25,26,28 under 35 U.S.C. 102(b) as being clearly anticipated by Sobky (US4249483) have been fully considered and are persuasive in that neither of these references teaches a dry and a wet pet food, but only a dry pet food and water.

47. Applicant's arguments with respect to the rejections of claims 25,26,28 rejected under 35 U.S.C. 103(a) as being unpatentable over Kornacki (US 5925390) in view of Sobky (US 4249483) and claim 27 rejected under 35 U.S.C. 103(a) as being unpatentable over Kornacki (US 5925390) in view of Sobky (US 4249483), further in view of Bunz (US 1576088)) have been fully considered and are persuasive in that none of the references teach a removable divider *for the intended purpose* of causing a least a portion of the wet and dry foods to contact each other when the divider is removed.

48. Applicant's arguments directed to Schommer et al. (US 5887749) have been fully considered but they are not persuasive.

49. With respect to claims 1-3,5,8,10,11,13,15 , and 17 applicant asserts that Schommer that the first compartment holds "packaged" wet pet food and that the container does not include any type of pet food. Applicant's attention is directed to Column 6, lines 5-19 and Column 1, lines 29-35, and the Figures. Note that Schommer's tray includes dry food bits, pet treats and the canned wet food all in separate compartments 40,30, and 20 (respectively). The canned wet food may be either poured into compartment 20 or mixed with the dry food in compartment 40, and after the consumer has dispensed the wet food compartment from the can, the entire

Art Unit: 1761

tray may be re-sealed and stored, which would result in wet food in an unpackaged condition. The rejection of claims 1-3,5,8,10,11,13,15,17 under 35 U.S.C. 102(b) as being clearly anticipated by Schommer et al. (US 5887749) stands.

50. With respect to claims 4,7,19, applicant states that Schommer does not teach the limitations of the independent claims 1,10, and 15, and does not address the particular limitations recited in claims 4,7,and 19. As discussed above with respect to claims 1-3,5,8,10,11,13,15 , and 17 , Schommer does teach the tray recited in the independent claims. The rejection of claims 4,7 and 19 under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) stands.

51. With respect to claims 6 and 12, applicant states that neither Schommer nor Lasater teach a tray with a dry food compartment including a unit of dry pet food and a wet pet food, including a wet pet food stored in an unpackaged condition. As discussed above with respect to claims 1-3,5,8,10,11,13,15 , and 17 , Schommer does teach such a tray recited in the claims from which 6 and 12 depend. Applicant does not address the combination of Schommer and Lasater as it pertains to the limitation recited in claims 6 and 12. The rejection of claims 6 and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) further in view of Lasater et al. (US 5200218) stands.

52. With respect to claim 18, applicant states that neither Schommer nor Morgan teach a tray with a dry food compartment including a unit of dry pet food and a wet pet food, including a wet pet food stored in an unpackaged condition. As discussed above with respect to claims 1-3,5,8,10,11,13,15 , and 17 , Schommer does teach such a tray

Art Unit: 1761

recited in the claim 15. Applicant does not address the combination of Schommer and Morgan as it pertains to the limitation recited in claims 6 and 12. The rejection of claim 18 under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) further in view of Morgan (WO 9925205) stands.

Conclusion

53. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

54. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

55. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

Art Unit: 1761

56. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

57. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761

